

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
MANDELA T. BROCK,

Plaintiff,

-against-

PRIME NOW LLC, *et al.*,Defendants.
-----XUSDC SDNY
DOCUMENT
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20-CV-9055 (VEC)

ORDER ADOPTING
REPORT &
RECOMMENDATION

VALERIE CAPRONI, United States District Judge:

WHEREAS on September 15, 2020, Plaintiff Mandela Brock, proceeding *pro se*, filed a complaint against Defendants Prime Now, LLC; Jeffrey Bezos; and Alex Martin Lopez in Supreme Court, New York County (Dkt. 1);

WHEREAS Defendants removed the action to federal court on October 28, 2020, *see* Not. of Rem., Dkt. 1;

WHEREAS on December 1, 2020, Plaintiff filed an Amended Complaint, naming all of the same defendants except that he replaced Amazon Prime with Amazon and added Defendants Melissa D. Hill and Liliya P. Kramer, *see* Am. Compl., Dkt. 15;

WHEREAS Plaintiff asserted causes of action under the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12112 to 12117; the Racketeer Influenced and Corrupt Organizations Act of 1970 (“RICO”), 18 U.S.C. §§ 1961 to 1968; and several New York state law claims (Dkt. 15);

WHEREAS on December 11, 2020, the Court referred this case to Magistrate Judge Wang for general pretrial management and for the preparation of reports and recommendations (“R&Rs”) on any dispositive motions (Dkt. 17);

WHEREAS on February 22, 2021, Defendants moved to dismiss the complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6), which Plaintiff opposed (Dkts. 28, 30, 33–34);

WHEREAS on August 26, 2021, Judge Wang entered an R&R, recommending that the Court grant Defendants’ motion to dismiss as to Plaintiff’s federal claims and either remand or dismiss without prejudice Plaintiff’s state law claims (R&R, Dkt. 50 at 19);

WHEREAS in the R&R, Judge Wang notified the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), they had fourteen days to file written objections to the R&R’s findings (*id.* at 20);

WHEREAS Judge Wang further noted that failure to file objections would result in both the waiver of objections and the preclusion of appellate review (*id.*);

WHEREAS no objections were filed by either party;

WHEREAS in reviewing an R&R, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge,” 28 U.S.C. § 636(b)(1)(C);

WHEREAS when, as here, no party objects to the R&R, the Court may accept the R&R provided that “there is no clear error on the face of the record,” *Heredia v. Doe*, 473 F. Supp. 2d 462, 463 (S.D.N.Y. 2007) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)); *see also* Fed. R. Civ. P. 72(b) advisory committee’s note;

WHEREAS an error is clear when the reviewing court is left with a “definite and firm conviction that a mistake has been committed,” *see Cosme v. Henderson*, 287 F.3d 152, 158 (2d Cir. 2002) (quoting *McAllister v. United States*, 348 U.S. 19, 20 (1954)); and

WHEREAS careful review of the R&R reveals that there is no clear error;


IT IS HEREBY ORDERED that the R&R is adopted in full, Defendant's motion to dismiss is granted, and this case is DISMISSED. Plaintiff's federal claims are dismissed with prejudice, while Plaintiff's state law claims are REMANDED to state court.

Because the R&R gave the parties adequate warning, *see* R&R at 20, the failure to file any objections to the R&R precludes appellate review of this decision. *See Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). Because appellate review is precluded, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and, therefore, permission to proceed *in forma pauperis* for purposes of appeal is denied.

IT IS FURTHER ORDERED that Clerk of Court is respectfully directed to terminate the open motion at Docket 28 and remand Plaintiff's state claims to state court. The Clerk is further directed to mail a copy of this Order to the *pro se* Plaintiff and to note the mailing on the docket.

SO ORDERED.

Date: September 19, 2021
New York, New York



VALERIE CAPRONI
United States District Judge